

(2) *Possession restrictions to facilitate harvest of sub-ACLs allocated to the common pool.* If the Regional Administrator projects that the sub-ACL of any stock allocated to the common pool pursuant to § 648.90(a)(4) will not be caught during the fishing year, the Regional Administrator may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to facilitate harvest and enable the total catch to approach, but not exceed, the pertinent sub-ACL allocated to the common pool for that fishing year.

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.86, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 648.87 Sector allocation.

(a) *Procedure for approving/implementing a sector allocation proposal.* (1) Any person may submit a sector allocation proposal for a group of limited access NE multispecies vessels to the Council and request that the sector be implemented through either a biennial adjustment or framework adjustment, as specified in § 648.90(a)(2), as long as it is submitted at least 1 year prior to the date the sector wants to begin operations in accordance with the conditions and restrictions of this section. The sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed sector, in compliance with the National Environmental Policy Act.

(2) Upon receipt of a sector allocation proposal, the Council must decide whether to initiate a management action to implement the sector proposal. Should a biennial adjustment or framework adjustment to authorize a sector allocation proposal be initiated, the Council will follow the framework adjustment provisions of § 648.90(a)(2). Any biennial adjustment or framework adjustment developed to implement a sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section.

(3) *Eligibility.* Any valid limited access NE multispecies permit, including

a Handgear A permit and those permits held in confirmation of permit history pursuant to § 648.4(a)(1)(i)(J) as of May 1, 2008, is eligible to join a NE multispecies sector, provided the permit complies with the restrictions specified in this section. Any valid limited access Category A or B monkfish permit may be eligible to join a NE multispecies sector, as described in this section, pursuant to any measures adopted by a future revision to the Monkfish FMP by both the New England and Mid-Atlantic Fishery Management Councils. Vessels that do not join a sector remain subject to the NE multispecies regulations for common pool vessels.

(4) *Minimum size.* To be authorized to operate as a sector under this section, a sector must be comprised of at least three NE multispecies permits issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued the other two or more persons in that sector. Having an ownership interest in a permit includes, but is not limited to, persons or entities who are shareholders, officers, or partners in a corporation owning a permit; who are partners (general or limited) to a permit owner; who, in any way, partly own a permit; or who derive any financial benefit, or exercises any control over, another permit. As long as at least three persons issued a NE multispecies permit meet these requirements, permit owners may have common ownership interests in other permits, vessels, or businesses associated with such permits.

(b) *General requirements applicable to all approved Sectors.* (1) All sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1), (b)(2), and (b)(3) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) *TAC allocation—(A) Allocated stocks.* Each sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock, with the exception of Atlantic halibut, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels/permits participating

in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section.

(B) *Eastern GB stocks.* Each sector allocated ACE for stocks managed under the terms of the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, as specified in § 648.85(a), shall be allocated a specific portion of the ACE for such stocks that can only be harvested from the Eastern U.S./Canada Area, as specified in § 648.85(a)(1). The ACE specified for the Eastern U.S./Canada Area portions of these stocks shall be proportional to the sector's allocation of the overall ACL available to all vessels issued a limited access NE multispecies permit for these stocks pursuant to § 648.90(a)(4). For example, if a sector is allocated 10 percent of the GB cod ACL available to all vessels issued a limited access NE multispecies permit, that sector would also be allocated and may harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to all vessels issued a limited access NE multispecies permit is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, the Sector would be allocated 100 mt of GB cod, of which no more than 10 mt could be harvested from the Eastern U.S./Canada Area and no more than 90 mt could be harvested from the rest of the GB cod stock area.

(C) *Carry-over.* With the exception of GB yellowtail flounder, a sector may carry over an amount of ACE equal to up to 10 percent of its original ACE allocation for each stock that is unused at the end of one fishing year into the following fishing year. Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified in this paragraph (b)(1)(i)(C), but will not increase an individual sector's allocation of Eastern GB stocks during the following year. This carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

(D) *Maximum ACE allocation.* There is no maximum amount of ACE that can be allocated to a particular sector during each fishing year.

(E) *Potential sector contribution (PSC).* For the purposes of allocating a share of the available ACL for each NE multispecies stock to approved sectors pursuant to § 648.90(a)(4), the landings history of all limited access NE multispecies permits shall be evaluated to determine each permit's share of the overall landings for each NE multispecies stock as specified in paragraphs (b)(1)(i)(E)(1) and (2) of this section. When calculating an individual permit's share of the overall landings for a particular regulated species or ocean pout stock, landed weight shall be converted to live weight to maintain consistency with the way ACLs are calculated pursuant to § 648.90(a)(4) and the way ACEs are allocated to sectors pursuant to this paragraph (b)(1)(i). This calculation shall be performed on July 1 of each year, unless another date is specified by the Regional Administrator, to redistribute the landings history associated with permits that have been voluntarily relinquished or otherwise canceled among all remaining valid limited access NE multispecies permits as of that date during the following fishing year. The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.

(1) *Calculation of PSC for all NE multispecies stocks except GB cod.* Unless otherwise specified in paragraph (b)(1)(i)(E)(2) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits, landings recorded in the NMFS dealer database of each stock of NE multispecies determined by NMFS to be the landings history associated with that permit while subject to the NE multispecies regulations based on whether the vessel fishing under that permit was issued a limited access NE multispecies permit or subsequently qualified for a limited access NE multispecies permit pursuant to § 648.4(a)(1)(i), including regulated species or ocean pout caught

under a NE multispecies DAS when participating in the skate or monkfish fisheries, but excluding, for example, landings by scallop vessels operating under a scallop DAS, shall be summed for fishing years 1996 through 2006. This sum shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors as of May 1, 2008. The resulting figure shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the PSC for each individual valid limited access NE multispecies permit for each regulated species or ocean pout stock allocated to sectors in the NE multispecies fishery for the following fishing year pursuant to this paragraph (b)(1)(i)(E)(1).

(2) *Calculation of GB cod PSC.* The GB cod PSC shall be calculated as specified in this paragraph (b)(1)(i)(E)(2) and shall remain with the permit indefinitely regardless whether the vessel participates in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector, as defined in §648.87(d)(1) or (2), joins a new sector, or fishes pursuant to the provisions of the common pool.

(i) *GB cod PSC for permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector.* For each owner of a valid NE multispecies permit, or CPH, that committed to participate in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector as evidenced by a valid authorized signature executed on or before March 1, 2008, on a preliminary roster for either of these sectors, the PSC for GB cod shall be equal to the sum of dealer landings of GB cod for fishing years 1996 through 2001, divided by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period. The PSC for all other regulated species or ocean pout stocks specified for these permits shall be calculated pursuant to paragraph (b)(1)(i)(E)(1) of this section. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(2)(i) shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the

GB cod PSC for each permit for the following fishing year.

(ii) *GB cod PSC for all other permits.* For each owner of a valid NE multispecies permit or CPH that has not committed to participate in either the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector, as specified in paragraph (b)(1)(i)(E)(2)(i) of this section, the GB cod PSC for each such permit or CPH shall be based upon the GB cod PSC available after accounting for the GB cod PSC calculated pursuant to paragraph (b)(1)(i)(E)(2)(i) of this section. To determine the GB cod PSC for each of these permits, the sum of the individual permit's landings of GB cod available in the NMFS dealer database for fishing years 1996 through 2006 shall be divided by the total landings of GB cod during that period by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period, after subtracting the total landings of GB cod by permits that committed to participate in either the GB Cod Hook Sector or GB Cod Fixed Gear Sector as of March 1, 2008. This individual share shall then be multiplied by the available GB cod PSC calculated by subtracting the GB cod PSC allocated pursuant to paragraph (b)(1)(i)(E)(2)(i) of this section from one. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(2)(ii) shall then be multiplied by a factor of 1/PSC of remaining permits as of July 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit.

(F) (1) *Carry-over.* For FY 2013, with the exception of GB yellowtail flounder, a sector may carry over an amount of ACE equal to up to 10 percent of its original ACE allocation for each stock that is unused at the end of one fishing year into the following fishing year; except that for GOM cod, for a period of 180 days after publication of this rule, a sector may only carry over an amount of ACE equal to up to 1.85 percent of its original GOM cod ACE.

(2) *Eastern GB cod and haddock carry-over.* Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified

in paragraph (b)(1)(i)(F)(I) of this section, but will not increase an individual sector's allocation of Eastern GB stocks during the following year.

(3) *Carry-over when vessels leave or change sectors.* Carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

(G) *Carryover accounting.* (1) For FY 2013, carryover of a particular stock attributed to a sector shall not be counted against a sector's ACE or the overall ACL for groundfish stocks.

(2) Beginning in FY 2014, carryover of a particular stock attributed to a sector, other than the NMFS-specified *de minimis* amount, shall be counted against the sector's ACE only for purposes of determining an overage subject to the AM in paragraph (b)(4)(iii) of this section in circumstances when the overall stock-level ACL has been exceeded.

(3) NMFS shall determine and announce the *de minimis* amount for FY 2014 and may modify each subsequent year. *De minimis* announcements shall be made consistent with the APA on or about 6 months before the end of the fishing year.

(4) In instances where the overall stock-level ACL has been exceeded and sectors have utilized available carry-over in excess of the NMFS specified *de minimis* amount, the sector will be subject to the AM provision, inclusive of the carryover amount in excess of the stock-level ACL, as outlined in paragraph (b)(4)(iii) of this section.

(5) The Council may request, on an annual basis, for NMFS to reduce the amount of the available eligible carry-over amount to ensure the total potential catch, the stock-level ACL plus the carryover amount, does not exceed the stock overfishing limit. Any such reduction of carryover amount shall be done consistent with the APA.

(ii) *Areas that can be fished.* Vessels in a sector may only fish in a particular stock area, as specified in paragraphs (b)(1)(ii)(A) through (F) of this section, and § 648.85(b)(6)(v), or the Eastern U.S./Canada Area, as specified in § 648.85(a)(1), if the sector has been allo-

cated, or acquires, pursuant to paragraph (b)(1)(viii) of this section, ACE for all stocks allocated to sectors pursuant to paragraph (b)(1)(i)(A) of this section that are caught in that stock area. A sector must project when its ACE for each stock will be exceeded and must ensure that all vessels in the sector cease fishing operations prior to exceeding it. Once a sector has harvested its ACE for a stock, all vessels in that sector must cease fishing operations in that stock area on a sector trip unless and until it acquires additional ACE from another sector pursuant to paragraph (b)(1)(viii) of this section, or as otherwise specified in an approved operations plan pursuant to paragraph (b)(2)(xiv) of this section. For the purposes of this paragraph (b)(1)(ii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular sector that exceeds the ACE allocated to that sector, as of the date received or purchased by the dealer, whichever occurs first, after considering all ACE transfer requests ultimately approved by NMFS during the current fishing year, pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to § 648.90(a)(5).

(A) *CC/GOM Yellowtail Flounder Stock Area.* The CC/GOM Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of CC/GOM yellowtail flounder ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by rhumb lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
1	(1)	70° 00'
2	(2)	70° 00'
3	41° 20'	(3)
4	41° 20'	69° 50'
5	41° 10'	69° 50'
6	41° 10'	69° 30'
7	41° 00'	69° 30'
8	41° 00'	68° 50'
9	42° 20'	68° 50'

Fishery Conservation and Management

§ 648.87

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA—Continued

Point	N. Latitude	W. Longitude
10	42° 20'	(4)

¹ Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. long.

² Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. long.

³ Intersection of east-facing coastline of Nantucket, MA, and 41° 20' N. lat.

⁴ U.S./Canada maritime boundary.

(B) *SNE/MA Yellowtail Flounder Stock Area*. The SNE/MA Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in §648.86, and for determining areas applicable to sector allocations of SNE/MA yellowtail flounder ACE pursuant to paragraph (b) of this section, is the area bounded by rhumb lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
1	35° 00'	(1)
2	35° 00'	(2)
3	39° 00'	(2)
4	39° 00'	69° 00'
5	39° 50'	69° 00'
7	39° 50'	68° 50'
8	41° 00'	68° 50'
9	41° 00'	69° 30'
10	41° 10'	69° 30'
11	41° 10'	69° 50'
12	41° 20'	69° 50'
13	41° 20'	(3)
14	(4)	70° 00'
15	(5)	70° 00'

¹ Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. lat.

² U.S./Canada maritime boundary.

³ Intersection of east-facing coastline of Nantucket, MA, and 41° 20' N. lat.

⁴ Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. long.

⁵ Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. long.

(C) *GOM Haddock Stock Area*. The GOM Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in §648.86 and for determining areas applicable to sector allocations of GOM haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

GOM HADDOCK STOCK AREA

Point	N. Latitude	W. Longitude
1	(1)	70° 00'
2	42° 20'	70° 00'
3	42° 20'	67° 40'
4	(2)	67° 40'
5	(3)	67° 40'
6	43° 50'	67° 40'
7	43° 50'	(4)
8	(4)	67° 00'
9	(5)	67° 00'

¹ Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. long.

² U.S./Canada maritime boundary southern intersection with 67° 40' W. long.).

³ U.S./Canada maritime boundary northern intersection with 67° 40' W. long.).

⁴ U.S./Canada maritime boundary.

⁵ Intersection of the south-facing ME coastline and 67° 00' W. long.

(D) *GB Haddock Stock Area*. The GB Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in §648.86 and for determining areas applicable to sector allocations of GB haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the west by the coastline of the United States, on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, on the east by the U.S./Canadian maritime boundary, and bounded on the north by straight lines connecting the following points in the order stated:

GB HADDOCK STOCK AREA

Point	N. Latitude	W. Longitude
1	(1)	70° 00'
2	42° 20'	70° 00'
3	42° 20'	(2)

¹ Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. long.

² U.S./Canada maritime boundary.

(E) *Redfish Stock Area*. The Redfish Stock Area, for the purposes of identifying stock areas for trip limits specified in §648.86 and for determining areas applicable to sector allocations of redfish ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and bounded on the south by a rhumb line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ.

(F) *GOM Winter Flounder Stock Area.* The GOM Winter Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

GOM WINTER FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
1	(1)	70°00'
2	42°20'	70°00'
3	42°20'	67°40'
4	(2)	67°40'
5	(3)	67°40'
6	43°50'	67°40'
7	43°50'	(4)
8	(4)	67°00'
9	(5)	67°00'

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.

(2) U.S./Canada maritime boundary (southern intersection with 67°40' N. lat.)

(3) U.S./Canada maritime boundary (northern intersection with 67°40' N. lat.)

(4) U.S./Canada maritime boundary.

(5) Intersection of the south-facing ME coastline and 67°00' W. long.

(iii) *Sector AMs.* At the end of the fishing year, NMFS shall evaluate sector catch using VTR, VMS, IVR, and any other available information to determine whether a sector has exceeded any of its ACE allocations based upon the cumulative catch by participating permits/vessels, as identified in the final operations plan approved by the Regional Administrator pursuant to paragraph (c) of this section, and each sector's share of any overage of the overall ACL for any stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), if necessary. Should an ACE allocated to a sector be exceeded in a given fishing year, the sector's ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year, and the sector, each vessel, vessel operator and/or vessel owner participating in the sector may be charged, as a result of said overages, jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If an ACE allo-

cated to a sector is not exceeded in a given fishing year pursuant to this paragraph (b)(1)(iii), the sector's ACE allocation shall not be reduced for the following fishing year as a result of an overage of an ACE by non-compliant sectors or an overage of sub-ACLs allocated to common pool vessels, but may be reduced if the excessive catch of a particular stock by other sub-components of the fishery causes the overall ACL of a particular stock to be exceeded pursuant to § 648.90(a)(5). If declining stock conditions result in a need to reduce fishing mortality, and all sectors and common pool vessels have operated within their ACE or sub-ACL limits, a sector's percentage share shall not be changed, but the amount this share represents may be reduced due to reduced overall ACL for a particular stock. If stock conditions improve, and certain sectors stay within their ACE while other sectors or the common pool exceed their respective ACEs or sub-ACLs, the sectors that stay within their ACEs shall receive a temporary increase in ACE equal to the amount that other sectors or the common pool exceeded their ACE or sub-ACL, divided among such sectors proportional to each sector's share of the ACL available to vessels issued a limited access NE multispecies permit.

(A) *Overage penalty if there is sufficient ACE to cover the overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but has sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of participating vessels during the fishing year following the overage, no overage penalty shall be applied to any member permit/vessel that leaves that sector to fish under the provisions of the common pool or in another sector in the year following the overage. Any impacts to departing member permits/vessels may be specified and addressed by the sector operations plan and associated sector contract.

(B) *Overage penalty if there is insufficient ACE to cover an overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but disbands in the year following the overage, or otherwise does not have sufficient ACE to address the overage pursuant to this

paragraph (b)(1)(iii) based upon the cumulative PSCs of permits/vessels participating in that sector during the fishing year following the overage, individual permit holders that participated in the sector during the fishing year in which the overage occurred shall be responsible for reducing their DAS/PSC to account for that overage in the subsequent fishing year, as follows:

(1) *PSC reduction.* If a sector disbands following an overage, and the owner of an individual permit joins another sector for the subsequent fishing year, that permit's contribution toward the ACE for the stock for which the overage occurred to the other sector in the subsequent fishing year shall be reduced by an amount equal to the overage divided by the number of permits/vessels participating in the sector during the fishing year in which the overage occurred. For example, if a sector comprised of 10 permits/vessels exceeded its GB cod ACE by 10,000 lb (4,536 kg) during the previous fishing year, but later disbands, each permit/vessel that was in that sector, but then joins another sector during the following fishing year shall have its contribution of GB cod to another sector temporarily reduced by 1,000 lb (453.6 kg) during the subsequent fishing year for the purposes of calculating the available GB cod ACE allocated to another sector during that fishing year.

(2) *DAS reduction.* If a sector disbands following an overage and the owner of an individual permit elects to fish under the provisions of the common pool during the subsequent fishing year, that permit/vessel's NE multispecies Category A DAS allocation for the subsequent fishing year shall be temporarily reduced by an amount proportional to the highest percentage overage by that sector of any of the stocks for which an overage occurred. For example, if a sector exceeded its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit would receive a 15-percent reduction in its Category A DAS allocation for the subsequent fishing year if fishing under the provisions of the common pool.

(3) *Fishing prohibition.* If a sector does not disband following an overage, but otherwise does not have sufficient ACE

to cover an overage based upon the PSC of participating permits, that sector's ACE for the stock for which the overage occurred shall be temporarily reduced to zero for the following fishing year, and that sector shall be prohibited from fishing on a sector trip in the stock area associated with the stock for which the ACE was exceeded during the following year, unless and until that sector can acquire sufficient ACE from another sector to cover the remaining overage from the previous fishing year. For example, if a sector comprised of 10 permits/vessels was allocated 10 mt of GB cod ACE, but caught 25 mt during the previous fishing year (i.e., it exceeded its GB cod ACE by 15 mt), each permit/vessel that participated in that sector during the following fishing year would have its GB cod PSC temporarily reduced to zero during the subsequent fishing year, and that sector would not be able to fish on a sector trip in the GB cod stock area until it could acquire at least an additional 5 mt of GB cod ACE from another sector (i.e., 15 mt overage—10 mt ACE for the following year = 5 mt overage remaining).

(C) *ACE buffer.* At the beginning of each fishing year, NMFS shall withhold 20 percent of a sector's ACE for each stock for a period of up to 61 days (i.e., through June 30), unless otherwise specified by NMFS, to allow time to process any ACE transfers submitted at the end of the fishing year pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section.

(iv) *Sector enforcement*—(A) *Sector compliance and joint/several liability.* Unless exempted through a letter of authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a

sector must also comply with all applicable requirements and conditions of the operations plan specified in paragraph (b)(2) of this section and the letter of authorization issued pursuant to paragraph (c)(2) of this section. Pursuant to 15 CFR part 904, each sector, permit/vessel owner, and vessel operator participating in the sector may be charged jointly and severally for violations of the following sector operations plan requirements, which may result in an assessment of civil penalties and permit sanctions: ACE overages, discarding of legal-sized NE multispecies, and misreporting of catch, including both landings and discards. For the purposes of enforcement, a sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors, as specified in this paragraph (b)(1)(iv).

(B) *Commitment to a sector.* A permit/vessel participating in a sector must remain in the sector for the remainder of the fishing year. Such permits/vessels cannot fish under both the sector provisions and the provisions of the common pool during that same fishing year for any reason, including, but not limited to, expulsion from the sector pursuant to enforcement actions or other measures specified in an approved sector operations plan, vessel replacement, or permit/vessel sale to another owner. For example, if a permit/vessel is sold by a sector participant during the fishing year, the new owner must comply with the sector regulations and the conditions of the sector operations plan, sector contract, or any other binding agreements among participating sector vessels for the remainder of the fishing year. If a permit/vessel has been expelled from a sector, the sector must notify NMFS of such an expulsion immediately. Any permit/vessel, vessel operator, or vessel owner removed from a sector during a specific fishing year consistent with sector rules shall not be eligible to fish in another sector or under the NE multispecies regulations for common pool vessels specified in this part for the remainder of that fishing year. For the purposes of this paragraph, “permit/vessel” refers to the fishing and landings history associated with a par-

ticular permit/vessel enrolled in a specific sector at the start of the fishing year that was used to calculate the PSC for that permit/vessel and contribute to the ACE for each stock allocated to that specific sector.

(v) *Sector monitoring.* Each sector shall monitor catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year, as specified in this paragraph (b)(1)(v). The sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to sectors; and report sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(vi) of this section. Unless otherwise specified in this paragraph (b)(1)(v), all catches of stocks allocated to sectors by vessels on a sector trip shall be deducted from the sector’s ACE for each NE multispecies stock regardless of what the fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (b)(1)(v), any regulated species or ocean pout caught using gear capable of catching NE multispecies (i.e., gear not listed as exempted gear under this part) would be deducted from a sector’s ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout landed while fishing for or catching skates or monkfish pursuant to the regulations for those fisheries would be deducted from the sector’s ACE for each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, if a sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the other sub-component of the appropriate stock of yellowtail flounder’s ACL specified for

the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

(A) *Discards.* A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to paragraph (b)(1)(i) of this section, unless otherwise required pursuant to §648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported to NMFS consistent with the reporting requirements specified in paragraph (b)(1)(vi) of this section. Discards shall not be included in the information used to calculate a vessel's PSC, as described in §648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each NE multispecies stock allocated to a sector.

(B) *Independent third-party monitoring program.* Beginning in fishing year 2013 (May 1, 2013), a sector must develop and implement an at-sea or electronic monitoring program to verify area fished, as well as catch and discards by species and gear type, and that is consistent with the goals and objectives of groundfish monitoring programs at §648.11(l). The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to paragraph (b)(2)(xi) of this section, and must meet the operational standards specified in paragraph (b)(5) of this section. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. The level of coverage for trips by sector vessels is specified in paragraph (b)(1)(v)(B)(I) of this section. The at-sea/electronic monitoring program shall be reviewed and approved by the Regional Administrator as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act. A service provider providing at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and be approved by NMFS in a manner consistent with the Administrative Procedure Act.

(1) *Coverage levels.* Except as specified in paragraph (b)(1)(v)(B)(I)(i) of this section, any service provider providing at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(I) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all operations of vessels operating in each sector throughout the fishing year. Coverage levels for an at-sea monitoring program shall be specified by NMFS, pursuant to paragraph (b)(1)(v)(B)(I)(i) of this section, but shall be less than 100 percent of all sector trips. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board.

(i) *At-sea/electronic monitoring.* Unless otherwise specified in this paragraph (b)(1)(v)(B)(I)(i), beginning in fishing year 2013, coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology at the overall stock level for each stock of regulated species and ocean pout, and to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels. In making its determination, NMFS shall take into account the goals and objective of groundfish monitoring programs at §648.11(l), the National Standards and requirements of the Magnuson-Stevens Act, including but not limited to the costs to sector vessels and NMFS, and any other relevant factors. For FYs 2013 and beyond, NMFS shall specify a separate coverage rate, lower than the coverage rate for all other sector trips, for sector trips fishing with 10-inch (25.4-cm) mesh or larger gillnets on a monkfish DAS, pursuant to §648.91(c)(1)(iii), and only in the SNE Broad Stock Area, as defined at §648.10(k)(3)(iv).

(2) *Hail reports.* For the purposes of the at-sea monitoring requirements

specified in paragraph (b)(1)(v)(B) of this section, sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering at-sea monitoring services. The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any at-sea or electronic monitoring program required by paragraph (b)(1)(v)(B) of this section, or specified in the annual sector operations plan, consistent with paragraph (b)(5) of this section.

(3) *Notification of service provider change.* If, for any reason, a sector decides to change approved service providers used to provide at-sea or electronic monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A sector may employ more than one service provider at any time, provided any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

(vi) *Sector reporting requirements.* In addition to the other reporting/record-keeping requirements specified in this part, a sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(vi).

(A) *VMS declarations and trip-level catch reports.* Prior to each sector trip, a sector vessel must declare into broad stock areas in which the vessel fishes and submit the VTR serial number associated with that trip pursuant to § 648.10(k). The sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by broad stock areas when fishing in multiple stock areas on the same trip, pursuant to § 648.10(k).

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels partici-

pating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) *Year-end report.* An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the following information: Catch, including landings and discards, of all species by sector vessels; the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions; and other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(vii) *Interaction with other fisheries—*
(A) *Use of DAS.* A sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE

multispecies DAS. If the regulations of another fishery require the use of a NE multispecies DAS, the DAS allocation and accrual provisions specified in § 648.82(d) and (e), respectively, apply to each trip by a sector vessel, as applicable. For example, if a sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) *Availability of ACE.* Notwithstanding the requirements in paragraph (b)(1)(vii)(A) of this section, if a sector has not been allocated or does not acquire sufficient ACE available to cover the catch of a particular stock of NE multispecies while participating in another fishery in which such catch would apply to the ACE allocated to a sector, vessels participating in that sector cannot participate in those other fisheries unless NMFS has approved a sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(viii) *ACE transfers.* All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (i.e., through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(viii)(B) of this section.

(A) *Application to transfer ACE.* ACE may be transferred from one sector to another through written request to the Regional Administrator. This request must include the name of the sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) *Approval of an ACE transfer request.* NMFS shall approve/disapprove a

request to transfer ACE based upon compliance by each sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) *Duration of transfer.* Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this paragraph (b)(1)(viii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

(ix) *Trip limits.* With the exception of stocks listed in § 648.86(1) and the Atlantic halibut trip limit at § 648.86(c), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) *Operations plan and sector contract.* To be approved to operate, each sector must submit an operations plan and preliminary sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. A final roster, sector contract, and list of Federal and state permits held by participating vessels for each sector must be submitted by December 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. The operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised.

Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified in an approved operations plan as administrative only. If a proposed sector does not comply with the requirements of this paragraph (b)(2), NMFS may decline to propose for approval such sector operations plans, even if the Council has approved such sector. At least the following elements must be contained in either the final operations plan or sector contract submitted to NMFS:

- (i) A list of all parties, vessels, and vessel owners who will participate in the sector;
- (ii) A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;
- (iii) A contract signed by all sector participants indicating their agreement to abide by the operations plan;
- (iv) The name of a designated representative or agent of the sector for service of process;
- (v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of such consolidation or redistribution within the sector;
- (vi) A list of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the sector rules;
- (vii) A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;

(viii) If applicable, a plan of how the ACE allocated to the sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide at-sea/electronic monitoring services; the mechanism and timing of any hail reports; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of sector operations, and, if necessary, proposed limitations to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vii)(B) of this section; and

(xv) A list of existing regulations that the sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) *NEPA analysis.* In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a sector to operate during a particular fishing year, each sector must develop and submit to NMFS, in conjunction with the yearly operations plan and sector contract, an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operations plan.

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide at-sea/electronic monitoring services described in paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and/or at-sea monitors as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) *Service provider information.* As part of the application for service provider approval/certification, potential service providers must include at least the following information:

(A) Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate;

(B) Contact information for official correspondence and communication with any other office;

(C) A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, enter-

tainment, loan, or anything of monetary value from such parties;

(D) A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider;

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, and personnel administration;

(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer at-sea monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover at-sea monitors (including during training); vessel owner; and service provider;

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's contract or employment status;

(I) Proof that the service provider's at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with an at-sea monitor, including, but not limited to, personal injury, death, harassment, or intimidation; and

(K) Evidence that the company is in good financial standing;

(ii) *Service provider performance requirements.* At-sea monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) A service provider must establish and carry out a comprehensive plan to deploy NMFS-certified at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

(1) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;

(2) A service provider must be able to deploy at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by sectors, or a subset of ports as part of a contract with a particular sector;

(3) A service provider must report at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector;

(4) A service provider must assign at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

(5) A service provider's at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;

(6) For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the sector manager and NMFS, as appropriate and as required by this section;

(B) The service provider must ensure that at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at

least 2 weeks following any monitored trip/offload;

(C) The service provider must report possible at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;

(E) The service provider must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.;

(F) A service provider may refuse to deploy an at-sea monitor or other approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:

(1) If the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

(2) If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider;

(3) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in §600.746; and

(4) Failure to pay for previous deployments of at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside, and/or at-sea monitoring services to

participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or non-performance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(1) At-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

(2) Incident/non-compliance reports (e.g., failure to offload catch); and

(3) Hail reports, landings records, and other associated interactions with vessels and dealers.

(I) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and

(J) A service provider must be able to supply at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

(iii) *Standards for individual at-sea monitors.* For an individual to be approved/certified as an at-sea monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of an at-sea monitor on board fishing vessels, pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as an at-sea monitor after consideration

of at least the following work-related issues:

(1) Susceptibility to chronic motion sickness;

(2) Ability to live in confined quarters;

(3) Ability to tolerate stress;

(4) Ability to lift and carry heavy objects up to 50 lb (22.7 kg);

(5) Ability to drag heavy objects up to 200 lb (90.7 kg); and

(6) Ability to climb a ladder.

(D) A current Red Cross (or equivalent) CPR/first aid certification;

(E) Absence of fisheries-related convictions, based upon a thorough background check; and

(F) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(5) *At-sea/electronic monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B) of this section must meet the following operational standards to be approved by NMFS:

(i) *Gear.* Each at-sea monitor must be provided with all of the equipment specified by the Northeast Fisheries At-sea Monitoring Program. A list of such equipment is available from the Northeast Fisheries Science Center upon request. At-sea/electronic monitoring service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (b)(4)(i)(I) of this section.

(ii) *Vessel selection protocol.* An at-sea/electronic monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(I) of this section. This protocol must include a method to allow for waivers in specific circumstances,

including how waivers would be requested, assessed, and recorded.

(iii) *Reporting/recordkeeping requirements*—(A) *Vessel requirements*. In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(I) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, whether a monkfish DAS will be used, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(5)(iii)(B)(I) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(B) *At-sea/electronic monitoring service provider requirements*—(1) *Confirmation of pre-trip notification*. Upon receipt of a pre-trip notification pursuant to paragraph (b)(5)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(5)(ii) of this section.

(2) *At-sea/electronic monitoring report*. A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hr of the completion of the trip, as instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) *Safety hazards*—(A) *Vessel requirements*. The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(5)(iii)(B)(I) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(5)(iv)(B) of this section, until the identified safety deficiency has been resolved, pursuant to § 600.746(i).

(B) *At-sea/electronic monitoring service provider requirements*. An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(5)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) *Adjustment to operational standards*. The at-sea/electronic monitoring operational standards specified in paragraph (b)(5) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(c) *Approval of a sector and granting of exemptions by the Regional Administrator*. (1) Once the Regional Administrator has made a preliminary determination that the documents submitted pursuant to paragraphs (a)(1), (b)(2), and (b)(3) of this section appear to comply with the requirements of this section, NMFS may consult with the Council and approve or disapprove sector operations consistent with the Administrative Procedure Act and other applicable law.

Fishery Conservation and Management

§ 648.87

(2) If a sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the sector. The letter of authorization shall authorize participation in the sector operations and may exempt participating vessels from any Federal fishing regulation applicable to NE multispecies vessels, except those specified in paragraphs (c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific time and areas within the NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of this paragraph (c)(2)(i), the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Essential Fish Habitat Closure Areas as defined at § 648.81(h); the Fippennies Ledge Area as defined in paragraph (c)(2)(i)(A) of this section; Closed Area I and Closed

Area II, as defined at § 648.81(a) and (b), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(e), where it overlaps with any Sector Rolling Closure Areas, as defined at § 648.81(f)(2)(vi). This list may be modified through a framework adjustment, as specified in § 648.90.

(A) *Fippennies Ledge Area.* The Fippennies Ledge Area is bounded by the following coordinates, connected by straight lines in the order listed:

FIPPENNIES LEDGE AREA

Point	N. Latitude	W. Longitude
1	42°50.0'	69°17.0'
2	42°44.0'	69°14.0'
3	42°44.0'	69°18.0'
4	42°50.0'	69°21.0'

(B) [Reserved]

(ii) *Universal sector exemptions.* All sector vessels are exempt from the following Federal fishing regulations under this part:

(A) Trip limits on NE multispecies stocks for which a sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (i.e., all stocks except Atlantic halibut, ocean pout, windowpane flounder, and Atlantic wolffish);

(B) The GOM Rolling Closure Areas and the GB Seasonal Closed Area specified in § 648.81(f)(1) and (g), respectively, provided sector vessels comply with the sector-specific GOM Rolling Closure Areas specified in § 648.81(f)(2)(vi);

(C) NE multispecies DAS restrictions other than those required to comply with effort controls in other fisheries, as specified in §§ 648.92 and 648.322; and

(D) The minimum codend mesh size restrictions for trawl gear specified in § 648.80(a)(4)(i) when using a haddock separator trawl defined in § 648.85(a)(3)(iii) or the Ruhle trawl defined in § 648.85(b)(6)(iv)(J)(3) within the GB RMA, as defined in § 648.80(a)(2), provided sector vessels use a codend with 6-inch (15.2-cm) minimum mesh.

(3) The Regional Administrator may withdraw approval of a sector, after consultation with the Council, at any time, if it is determined that sector participants are not complying with

the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a sector may only be done in a manner consistent with the Administrative Procedure Act and other applicable law.

(d) *Approved sector allocation proposals.* Eligible NE multispecies vessels, as specified in paragraph (a)(3) of this section, may participate in the sectors identified in paragraphs (d)(1) through (19) of this section, provided the operations plan is approved by the Regional Administrator in accordance with paragraph (c) of this section and each participating vessel and vessel operator and/or vessel owner complies with the requirements of the operations plan, the requirements and conditions specified in the letter of authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section. All operational aspects of these sectors shall be specified pursuant to the operations plan and sector contract, as required by this section.

- (1) *GB Cod Hook Sector.*
- (2) *GB Cod Fixed Gear Sector.*
- (3) *Sustainable Harvest Sector.*
- (4) *Port Clyde Community Groundfish Sector.*
- (5) *Northeast Fishery Sector I.*
- (6) *Northeast Fishery Sector II.*
- (7) *Northeast Fishery Sector III.*
- (8) *Northeast Fishery Sector IV.*
- (9) *Northeast Fishery Sector V.*
- (10) *Northeast Fishery Sector VI.*
- (11) *Northeast Fishery Sector VII.*
- (12) *Northeast Fishery Sector VIII.*
- (13) *Northeast Fishery Sector IX.*
- (14) *Northeast Fishery Sector X.*
- (15) *Northeast Fishery Sector XI.*
- (16) *Northeast Fishery Sector XII.*
- (17) *Northeast Fishery Sector XIII.*
- (18) *Tristate Sector.*
- (19) *Northeast Coastal Communities Sector.*
- (20) *State of Maine Permit Banking Sector.*
- (21) *State of Rhode Island Permit Bank Sector.*
- (22) *State of New Hampshire Permit Bank Sector.*
- (23) *State of Massachusetts Permit Bank Sector.*

(24) *Sustainable Harvest Sector III.*

(e) *State-operated permit bank.* A state-operated permit bank must meet and is subject to the following requirements and conditions:

(1) The state-operated permit bank must be initially established using a Federal grant award from NOAA through a valid Memorandum of Agreement (MOA) with NMFS and the state must maintain and comply with such MOA. The MOA must contain and the state must comply with at least the following requirements and conditions:

(i) The state may not associate a state-operated permit bank permit with a vessel engaged in any fishing or other on-the-water activities;

(ii) The state must establish the minimum eligibility criteria to determine whether a sector and its associated vessels are qualified to receive either ACE or DAS from the state-operated permit bank;

(iii) The state must identify a program contact person for the state agency administering the state-operated permit bank;

(iv) The state must provide to NMFS a list of all permits held by the state under the aegis of the state-operated permit bank, and declare which permits will be used in the coming fishing year for exclusively DAS leasing to common pool vessels and which permits are to be used exclusively for transferring ACE to sectors (including the leasing of DAS to sector vessels for the purpose of complying with the requirements of other FMPs); and

(v) The state must prepare and submit an annual performance report to NMFS, and that said performance report must include, at a minimum, the following elements:

(A) A comprehensive listing of all permits held by the state-operated permit bank, identifying whether a permit was used for ACE transfers to sectors (including DAS leases to the sector members) or DAS leases to common pool vessels, the total amount of ACE, by stock, and DAS available to the state-operated permit bank for transfers and leases to sectors and common-pool vessels;

(B) A comprehensive listing of all sectors to which ACE was transferred from the state-operated permit bank,

including the amount, by stock, of ACE transferred to each sector, including a list of all vessels that harvested the ACE transferred to the sector and the amounts harvested;

(C) A comprehensive listing of all sector vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each sector vessel; and

(D) A comprehensive listing of all common pool vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each common pool vessel.

(2) *Eligibility.* If a state is issued a permit that meets sector eligibility requirements, as defined in paragraph (a)(3) of this section, such permit may be held by a state-operated permit bank.

(3) *Allocation and utilization of ACE—*
(i) *Allocation of ACE.* The amount of ACE allocated to a state-operated permit bank shall be derived from the permits appropriately declared by the state to be “ACE permits,” pursuant to paragraph (e)(1)(i)(v) of this section, for the fishing year and allocated on a stock-by-stock basis pursuant to paragraph (b)(1)(i) of this section.

(ii) *Acquiring ACE.* Except as provided in this paragraph, a state-operated permit bank may not acquire ACE for a fishing year through a transfer from a sector. If ACE is transferred to a sector from a state-operated permit bank, NMFS may authorize the return of the unused portion of such ACE (up to the total originally transferred) to the state-operated permit bank upon written agreement by both parties. The state-operated permit bank may then redistribute the available ACE to another qualifying sector during that fishing year.

(iii) *Transferring ACE.* Subject to the terms and conditions of the state-operated permit bank’s MOAs with NMFS, as well as ACE transfer restrictions described in paragraph (b)(1)(viii) of this section, a state-operated permit bank may transfer ACE, on a stock-by-stock basis, to other state-operated permit banks.

(4) *Allocation and utilization of days-at-sea—*(i) *Allocation of DAS.* The number of DAS available for a state-oper-

ated permit bank to provide to sector or common pool vessels shall be the accumulated NE Multispecies Category A DAS assigned to the fishing vessel permits held by the state and appropriately declared by the state pursuant to paragraph (e)(1)(v) of this section to be either “ACE permits” or “common pool permits” for that fishing year, consistent with the terms of the state’s permit bank MOA.

(ii) *Acquiring DAS.* A state-operated permit bank may not acquire DAS through a lease from a vessel permit (including permits held by other state-operated permit banks), as described in § 684.82(k). If a vessel leases DAS from a state-operated permit bank, NMFS may authorize the return of the unused portion of such DAS to the state-operated permit bank upon written agreement by both parties, provided none of the DAS had been used. The state-operated permit bank may then redistribute the available DAS to another vessel during the same fishing year.

(5) *Annual report.* A state-operated permit bank shall report to the Council annually on the performance of the state-operated permit bank. Such reports shall include at a minimum and to the extent that the information does not conflict with any regulations regarding the protection of personal and/or proprietary information, all elements listed in paragraph (e)(1)(v) of this section.

(6) *Use of additional funds.* If additional funds from any source become available to a state-operated permit bank, the state-operated permit bank may not allocate or transfer any ACE that may be associated with any new permit purchased with those funds, until the state-operated permit bank provides the Council the opportunity to review the implications of the expanded state-operated permit bank to the goals and objectives of the NE Multispecies FMP.

(7) *Violation of the terms and conditions applicable to a state-operated permit bank.* If a state or state-operated permit bank violates or fails to comply with any of the requirements and conditions specified in this section or in the MOA referenced in paragraph (e)(1)

§ 648.88

50 CFR Ch. VI (10–1–13 Edition)

of this section, the state or state-operated permit bank is subject to the actions and penalties specified in § 648.4(n) or the MOA.

[75 FR 18338, 18374, Apr. 9, 2010, as amended at 76 FR 23072, Apr. 25, 2011; 76 FR 42586, July 19, 2011; 77 FR 16497, Mar. 23, 2012; 77 FR 26125, May 2, 2012; 78 FR 26160, 26208, May 3, 2013; 78 FR 53367, Sept. 30, 2013]

EFFECTIVE DATE NOTE: At 78 FR 26208, May 3, 2013, in § 648.87, paragraph (b)(1)(i)(C) was suspended, effective May 3, 2013 through Oct. 30, 2013.

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (90.7 kg) of cod, and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is adjusted by NMFS, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)). For example, if the GOM cod trip limit specified at § 648.86(b)(1) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Regulated Mesh Area would also double to 150 lb (68 kg).

(2) *Restrictions:* (i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(iv) *Declaration.* To fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authoriza-

tion from the Regional Administrator declaring an intent to fish south of the GOM Regulated Mesh Area, and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. Such a vessel may transit the GOM Regulated Mesh Area, provided that their gear is stowed in accordance with the provisions at § 648.23(b).

(b) *Charter/party permit.* A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

(d) *Non-regulated NE multispecies permit.* A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies, unless otherwise restricted by § 648.86. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

[69 FR 22983, Apr. 27, 2004, as amended at 69 FR 63481, Nov. 2, 2004; 71 FR 62195, Oct. 23, 2006; 75 FR 18348, Apr. 9, 2010; 76 FR 23075, Apr. 25, 2011; 77 FR 19143, Mar. 30, 2012]